

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BENJAMIN VANFOSSAN,

Plaintiff,

v.

ARNEL DELOS SANTOS, et al.,

Defendants.

No. 1:20-cv-00173-DAD-EPG (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS

(Doc. No. 61)

Plaintiff Benjamin VanFossan is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action filed pursuant to 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On January 27, 2022, the assigned magistrate judge issued findings and recommendations, recommending that defendants' motion for summary judgment (Doc. No. 50), brought on the grounds that plaintiff had failed to exhaust his administrative remedies with regard to defendants De Los Santos, Alkire, Cruz, and Robles prior to bringing suit be granted, and that the motion be denied to the extent that it seeks a ruling that plaintiff failed to exhaust his administrative remedies prior to bringing suit with regard to plaintiff's claims brought against defendants Gonzales and Lewandowski. (Doc. No. 61.) The findings and recommendations further recommended that plaintiff's motion for summary judgment (Doc. No. 37) be granted to the extent that it seeks a ruling that plaintiff exhausted his administrative remedies as to defendants

1 Gonzales and Lewandowski, and denied to the extent that it requests a ruling that plaintiff
2 exhausted his administrative remedies with regard to defendants De Los Santos, Alkire, Cruz, and
3 Robles. (*Id.*)

4 The pending findings and recommendations were served on the parties and contained
5 notice that any objections thereto were to be filed within twenty-one (21) days from the date of
6 service. (*Id.* at 21.) To date, no objections have been filed with the court, and the time in which
7 to do so has now passed.

8 In accordance with the provisions of 28 U.S.C § 636(b)(1)(C), this court has conducted a
9 *de novo* review of the case. Having carefully reviewed the entire file, the court finds the findings
10 and recommendations to be supported by the record and by proper analysis.

11 Accordingly,

- 12 1. The findings and recommendations issued on January 27, 2022 (Doc. No. 61) are
13 adopted in full;
- 14 2. Defendants' motion for summary judgment (Doc. No. 50) is granted to the extent
15 that it seeks a ruling that plaintiff failed to exhaust his administrative remedies as
16 to defendants De Los Santos, Alkire, Cruz, and Robles, and denied to the extent
17 that it seeks a ruling that plaintiff failed to exhaust his administrative remedies as
18 to defendants Gonzales and Lewandowski;
- 19 3. Plaintiff's motion for summary judgment (Doc. No. 37) is granted to the extent
20 that it seeks a ruling that plaintiff exhausted his remedies as to defendants
21 Gonzales and Lewandowski, and denied to the extent that it seeks a ruling that
22 plaintiff exhausted his administrative remedies as to defendants De Los Santos,
23 Alkire, Cruz, and Robles;
- 24 4. The claims in this action against defendants De Los Santos, Alkire, Cruz, and
25 Robles are dismissed without prejudice;
- 26 5. The Clerk of the Court is directed to terminate defendants De Los Santos, Alkire,
27 Cruz, and Robles as defendants on the docket; and

28 /////

